IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WA.No. 2038 of 2001(D)

AGAINST THE JUDGEMENT IN OP.610/1994 Dated 20/12/2000
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APPELLANT:
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1. THE SECRETARY, MINISTRY OF DEFENCE, NEW DELHI

2. THE SENIOR RECORD OFFICER, MADRAS-
ENGINEERING GROUP,
POST BOX NO.4201, BANGALORE

3. THE CHIEF CONTROLLER OF DEFENCE (PENSION)
ALLAHABAD.

BY ADV. SRI.K.M.JAMALUDHEEN, CGC

RESPONDENTS:
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1. DAMODARAN A.V. S/O VELAYUDHAN,
EX.NO.1370044 K.
(SAPPER), AUTOKARAN HOUSE,
VIYYUR P.O. TRICHUR DISTRICT- DIED

2. K.K.SOBHANA, W/O LATE A.V.DAMODARAN.
AITPLARAM JPISE. VIYYUR P.O. THRISSUR

3. MASTER MITHUN, S/O LATE A.V.DAMODHARAN,
AUTOKARAN HOUSE, VIYYUR P.O. THRISSUR

4. MASTER VISHNU, (MINOR),
S/O LATE A.V.DAMODHARAN,
AUTOKARAN HOUSE, VIYYUR P.O. THRISSUR

BY ADV. SRI.P.V.MOHANAN
SRI.P.S.SREEDHARAN PILLAI, SCGSC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & ANTONY DOMINIC, JJ

W.A. 2038/2001

Dated this the 19th day of July, 2007

JUDGMENT

K.S.Radhakrishnan, J.

Writ Petition was preferred by one Late Damodaran seeking a declaration that he is eligible to get dis-ability pension under the provisions contained in Pension Regulations for the Army 1961. Writ Petition was allowed by the learned Single Judge against which this writ appeal has been preferred.

2. Petitioner was enrolled in the Indian Army as Sapper on 29.11.1979 and after the training he was attested on 3.1.1981. On 7.2.1985, he was discharged from service on medical ground. The disease attributed to the petitioner was “Schizoperrenia”. In the counter affidavit filed by the respondents it is stated that his disability was not attributed to military service. According to the respondents, it was a constitutional disease. Conflicting views were taken by the officials. Learned Single Judge however referred to the medical report which has been extracted in paragraph 5 of the judgment

and came to the conclusion that there was no such disease when he entered service. Damodaran is now no more and his wife and children are prosecuting the matter. Prosecute

3. Considering the facts and circumstances of the case, we find no reason to interfere with the discretion exercised by the learned Single Judge. Appeal fails and is accordingly dismissed.

K.S.RADHAKRISHNAN
Judge

ANTONY DOMINIC
Judge

mrcs